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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
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JOHN PELS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

KEURIG DR. PEPPER. INC., a
Delaware corporation,

Defendants.

Case No. _____

**CLASS ACTION COMPLAINT
FOR:**

1. **VIOLATION OF
CALIFORNIA'S
CONSUMERS LEGAL
REMEDIES ACT;**
2. **VIOLATION OF
CALIFORNIA'S UNFAIR
COMPETITION LAW; and**
3. **VIOLATION OF
CALIFORNIA'S FALSE
ADVERTISING LAW**

JURY TRIAL DEMANDED

1 Plaintiff John Pels, on behalf of himself and all others similarly situated,
2 through his undersigned attorneys, alleges this Class Action Complaint against
3 Defendant Keurig Dr. Pepper. Inc. (“Keurig”) on actual knowledge as to his own
4 acts, and on information and belief after due investigation as to all other allegations,
5 as follows:

6 **NATURE OF THE ACTION**

7 1. This is a consumer class action against Keurig, one of the world’s
8 largest bottlers and distributors of bottled water and flavored beverages.

9 2. Plaintiff is a California consumer who, within the Class Period alleged
10 herein, purchased and consumed bottled beverages distributed as part of Keurig’s
11 popular Peñafiel brand. This brand consists of about 14 different Peñafiel varieties
12 including Peñafiel Mineral Spring Water, the particular variety Plaintiff purchased.

13 3. Peñafiel Mineral Spring Water has been contaminated by toxic levels
14 of arsenic for many years. Indeed, the FDA detected these unlawful arsenic levels
15 on more than one occasion. Keurig disregarded the danger, and did not shut down
16 operations at its Peñafiel plant in Mexico, did not undertake remedial measures until
17 recently (or so it has claimed), and to this day has failed to issue a recall. Keurig has
18 concealed that thousands of its customers have ingested bottled water which
19 contains unsafe levels of arsenic, a known poison.

20 4. Keurig would not even have undertaken the recently reported remedial
21 measures except that it was embarrassed into doing so by an exposé in *Consumer*
22 *Reports*. Of the many water brands tested by *Consumer Reports*, Peñafiel water was
23 the only brand that exhibited such high toxicity.

24 5. Peñafiel is part of Dr. Pepper Snapple Group, owned by Defendant
25 Keurig, which markets more than 50 beverage brands throughout North America. It
26 is likely that the other Peñafiel varieties—which draw water from the same source—
27 are similarly dangerous to unsuspecting consumers.

28

PARTIES

11. Plaintiff Pels is an individual and a resident of Sonoma County, California and a citizen of California. During the Class Period (as defined below) Plaintiff purchased Peñafiel Mineral Spring Water, was deceived by Defendant in that he was of the belief he was obtaining a safe product made in conformity with the law, and suffered an ascertainable loss and monetary damages as a result of Defendant's unlawful conduct alleged herein. Should Defendant reform its conduct, Plaintiff will resume buying Peñafiel bottled water.

12. Defendant Keurig is a for-profit corporation formed and existing under the laws of the State of Delaware with its principal place of business at 83 South Avenue, Burlington, Massachusetts 01803, and thus is a citizen of Delaware and Massachusetts.

FACTUAL ALLEGATIONS

13. The demand for bottled water continues to grow in the United States and internationally. Consumers believe bottled water is healthy, unadulterated and more flavorful in many cases than tap water.

14. Trade organizations like the International Bottled Water Association work hard to reinforce in the public mind that the bottled product is safely sourced and subject to stringent testing:

Once the water enters the bottled water plant several processes are employed to ensure that it meets the U.S. Food and Drug Administration (FDA) purified water standard. *These treatments can include utilizing a multi-barrier approach. Measures in a multi-barrier approach may include one or more of the following: reverse osmosis, distillation, micro-filtration, carbon filtration, ozonation, and ultraviolet (UV) light. The finished water product is then placed in a sealed bottle under sanitary conditions and sold to the consumer.*

1 Moreover, the water from public water systems is often compromised
2 after emergency situations or natural disasters (e.g., hurricanes, floods,
3 tornados, fires, or boil alerts). During these times, bottled water is a
4 necessary and reliable alternative to deliver clean, safe drinking water.¹

5 15. Bottled water is subject to comprehensive government regulation at
6 both the federal and state level. In addition, the International Bottled Water
7 Association (IBWA) has adopted industry standards (IBWA Bottled Water Code of
8 Practice) that are, in some instances, more stringent than FDA or EPA requirements.
9 As mandated by federal law, FDA's bottled water standards must be no less
10 stringent and no less protective of the public health than EPA's regulations for
11 public drinking water.

12 16. Both the FDA and the EPA are underfunded and understaffed.
13 Accordingly, they sometimes limit themselves to notifying distributors of a problem,
14 and expecting them to act responsibly in rectifying it. Most such companies do act
15 responsibly. Others, like Keurig here, do not.

16 17. One of the chief concerns about any drinking water is that it may
17 become contaminated by either naturally-occurring (yet harmful) substances, or by
18 artificial toxins.

19 18. Arsenic is poisonous to humans and regulations exist to limit the
20 amount of arsenic in drinking water. Since arsenic is a naturally occurring element
21 it may leach into water sources used for drinking unless detected and filtered out. If
22 it is not, this poses a serious public health risk. For example:

23 (a) **It Damages the Heart:** CNN reported on May 7, 2019:
24 "Young adults free of diabetes and cardiovascular disease developed heart damage
25 after only five years of exposure to low-to-moderate levels of arsenic commonly
26 found in groundwater. This was the finding of a study published Tuesday in

27
28 ¹ *Bottled Water Vs. Tap Water*, International Bottled Water Association, available at:
<https://www.bottledwater.org/health/bottled-water-vs-tap-water>

1 Circulation: Cardiovascular Imaging, an American Heart Association Journal.
2 “Low-level arsenic exposure is associated with a disproportionate growth of the
3 heart independent of hypertension and other traditional risk factors,” the study's lead
4 author, Dr. Gernot Pichler, wrote. “The higher the arsenic content in drinking water,
5 the greater the damage to the heart.”

6 (b) **It is a Carcinogen:** The International Agency for Research on
7 Cancer (IARC), part of the World Health Organization (WHO), has one of its major
8 goals to identify causes of cancer. IARC classifies arsenic and inorganic arsenic
9 compounds as “carcinogenic to humans.” This is based on sufficient evidence in
10 humans that these compounds can cause: lung cancer, bladder cancer and skin
11 cancer.

12 (c) **It can Lead To Kidney Disease:** Arsenic exposure can lead to
13 chronic kidney disease and kidney fibrosis. Numerous scientific studies have shown
14 that arsenic exposure led to various forms of renal dysfunction. Normally after an
15 acute kidney injury, kidney cells regrow to recover the organ’s function. However,
16 chronic exposure to toxicants, like arsenic, injures the kidneys repeatedly and leads
17 to the development of chronic kidney disease, an irreversible condition for which
18 there is no current treatment. Worse still, chronic kidney disease is progressive and
19 leads to kidney failure.

20 (d) **It Increases the Risk of Diabetes:** Science Daily reported in
21 2018 that chronic exposure to arsenic interferes with insulin secretion in the
22 pancreas, which may increase the risk of diabetes. It drew on research published in
23 the American Journal of Physiology -- Regulatory, Integrative and Comparative
24 Physiology.

25 19. Under federal and state standards, companies like Keurig are required
26 to ensure that water and water-based products contain arsenic levels no higher than
27 10 parts per billion (ppb). The FDA has advised:
28

1 Producers of bottled water are responsible for assuring, through
2 appropriate manufacturing techniques and sufficient quality control
3 procedures, that all bottled water products introduced or delivered for
4 introduction into interstate commerce comply with the quality standard
5 (§ 165.110(b)). *Bottled water that is of a quality below the prescribed*
6 *standard is required by § 165.110(c) to be labeled with a statement of*
7 *substandard quality.* Moreover, any bottled water containing a
8 substance at a level that causes the food to be adulterated under section
9 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory
10 action, even if the bottled water bears a label statement of substandard
11 quality.²

12 20. Peñafiel water was first bottled in Mexico in 1948 by the Peñafiel
13 family. It became wildly popular. Large companies became interested in it—after a
14 period during which it was owned and run by Cadbury Schweppes. It was acquired
15 (and is now run) by Keurig’s Dr. Pepper Snapple Group unit. The bottling
16 operations remain in Mexico.

17 21. As early as 2013, high levels of arsenic were detected in Peñafiel water
18 during an inspection of a company named R.R. Importaciones Inc. in Passaic, New
19 Jersey. The proprietor represented that he had only imported the product for
20 personal use in 2012, yet one year later dozens of bottles from that same distributor
21 were ordered destroyed. Keurig has disclaimed knowledge of this incident, yet it
22 may be inferred that high levels of arsenic were in Peñafiel water as early as 2012.
23 It is difficult to understand how Keurig would not know the destination of bottles it
24 exported to the United States.

25 22. In 2015 and again in early 2018, the FDA issued import alerts entitled:
26 “Detention Without Physical Examination of Bottled Water due to Arsenic ***and

27
28 ² Available at: <https://www.federalregister.gov/documents/2004/12/02/04-26531/beverages-bottled-water>

1 Flavored Water Beverages*** Due to Inorganic Arsenic.” Among the producers
2 listed was Peñafiel; the toxic products were identified as carbonated water (March 4,
3 2015) and mineral water (April 4, 2018). Nonetheless the issue persisted and import
4 of these dangerous products continued into the United States unabated.

5 23. On April 18, 2019 Consumerreports.org published an article entitled,
6 “*Arsenic in Some Bottled Water Brands at Unsafe Levels, Consumer Reports*
7 *Says.*”³ The article reflects Consumer Reports’ independent review of various
8 brands of bottled water. Only 11 brands out of 130 tested had detectable levels of
9 arsenic. Peñafiel water stood alone in exhibiting a high level of toxicity—70%
10 above the legal standard:

11 As part of our investigation, CR also was able to purchase two brands
12 of imported water—Jermuk from Armenia and Peñafiel from Mexico—
13 that are on an import alert issued by the federal government for
14 previously having arsenic levels above the federal limit of 10 ppb. Such
15 an alert is meant to “prevent potentially violative products from being
16 distributed in the United States,” according to the Food and Drug
17 Administration. Even so, CR easily purchased the two brands in retail
18 stores in two states and on Amazon.

19 Beverage giant Keurig Dr. Pepper provided CR in March with
20 Peñafiel's bottled water quality report for 2018, *which stated that the*
21 *water had nondetectable amounts of arsenic.* But the company said
22 this week that it had conducted new testing, because of CR’s questions,
23 and confirmed levels above the federal limit, at an average of 17 ppb.

24 “An arsenic level of 17 ppb is a clear violation of the federal bottled
25 water standard of 10 ppb,” says Jean Halloran, director of food policy
26 initiatives at CR.

27
28 ³ Available at: <https://www.consumerreports.org/water-quality/arsenic-in-some-bottled-water-brands-at-unsafe-levels/>

1 31. Among the questions of law and fact common to the Class are:

2 a. Whether Defendant marketed and sold in an unlawful manner;

3 b. Whether Defendant's actions were deceptive and misleading in
4 connection with marketing and sale of Peñafiel beverages;

5 c. Whether Defendant engaged in the course of conduct complained
6 of herein;

7 d. Whether Defendant's marketing and offer for sale the items on
8 the website constitutes a deceptive practice; and

9 e. The proper measure of damages.

10 32. Typicality: Plaintiff's claims are typical of the Class because he bought
11 Peñafiel during the Class Period. Defendant's allegedly deceptive actions concern
12 the same business practices described herein. Thus, Plaintiff and Class Members
13 sustained the same injuries and damages arising out of Defendant's conduct in
14 violation of law. The injuries and damages of each Class Member were caused
15 directly by Defendant's wrongful conduct in violation of law as alleged herein.

16 33. Adequacy: Plaintiff will fairly and adequately protect the interests of all
17 Class Members because it is in their best interests to prosecute the claims alleged
18 herein to obtain full compensation they are due for the illegal conduct of which they
19 complain. Plaintiff also has no interests that conflict with or are antagonistic to the
20 interests of Class Members. Plaintiff has retained highly competent and experienced
21 class action attorneys to represent their interests and that of the Class. No conflict of
22 interest exists between Plaintiff and Class Members because all questions of law and
23 fact regarding liability of Defendant are common to Class Members and
24 predominate over the individual issues that may exist. Plaintiff and his counsel have
25 the necessary financial resources to adequately and vigorously litigate this class
26 action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the
27 Class Members and are determined to diligently discharge those duties seeking the
28 maximum possible recovery for the Class Members.

34. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class Members' rights and disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the Class may be relatively small, the expenses and the burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action.

35. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

36. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CLAIM FOR RELIEF

(Violation of California's Consumers Legal Remedies Act ("CLRA"))

Cal. Civ. Code §§ 1750, *et seq.* (Equitable relief only)

37. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

38. This Claim is brought pursuant to CLRA, California Civil Code §§ 1750, *et seq.*

1 39. CLRA prohibits any unfair, deceptive, and/or unlawful practices, as
2 well as unconscionable commercial practices in connection with the sale of any
3 goods or services to consumers. *See* Cal. Civ. Code § 1770. The CLRA “shall be
4 liberally construed and applied to promote its 15 underlying purposes, which are to
5 protect consumers against unfair and deceptive business 16 practices and to provide
6 efficient economical procedures to secure such protection.” Cal. Civ. Code § 1760.

7 40.. Defendant is a “person” under the CLRA. Cal. Civ. Code § 1761(c).
8 Plaintiff is a “consumer” under the CLRA. Cal. Civ. Code § 1761(d). The Peñafiel
9 beverages are “good(s)” under the CLRA, Cal. Civ. Code § 1761(a). Plaintiff’s
10 purchase of the Peñafiel beverages constitute a “transaction[.]” under the CLRA.
11 Cal. Civ. Code § 1761. Defendant’s actions and conduct described herein constitute
12 transactions that have resulted in the sale of goods to consumers.

13 41. Defendant’s failure to conform the Peñafiel beverages’ contents to
14 required safety standards is an unfair, deceptive, unlawful, and unconscionable
15 commercial practice.

16 42. As a result, Defendant’s conduct violates several provisions of the
17 CLRA, including, but not limited to:

18 a. 1770(a)(5): Representing that goods or services have
19 sponsorship, ***approval, characteristics, ingredients, uses, benefits***, or quantities that
20 they do not have—here, each Peñafiel beverage carried with it the impression that it
21 was a safe, legally compliant product which consumers could use without risking
22 serious illness;

23 b. 1770(a)(7): Representing that goods or services are of a
24 particular standard, quality, or grade, or that goods are of a particular style or model,
25 if they are of another—as above, each Peñafiel beverage carried with it the
26 impression that it was a safe, legally compliant product which consumers could use
27 without risking serious illness; and
28

43. As a result of Defendant's violations, pursuant to Cal. Civ. Code 1780(a)(2) Plaintiff is entitled to an injunction to prevent the wrongdoing from continuing.

44. In accordance with Cal. Civ. Code § 1780(d), Plaintiffs have attached a "venue affidavit" to this Complaint, showing that this action has been commenced in the proper county.

SECOND CLAIM FOR RELIEF

(Violation of California's Unfair Competition Law ("UCL"))

Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Prong)

45. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

46. Section 17200 of the California Business & Professions Code, known as the Unfair Competition Law ("UCL"), prohibits any "unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or misleading advertising" Section 17200 specifically prohibits any "unlawful ... business act or practice."

47. The UCL borrows violations of other laws and statutes and considers those violations also to constitute violations of California law.

48. Defendant's conduct was and continues to be unlawful under FDA regulations.

49. Defendant's conduct in unlawfully offering for sale and selling Peñafiel beverages that are unlawfully contaminated by arsenic is without excuse or justification.

50. Defendant has violated the FDA arsenic level rules which make it unlawful to disseminate beverage containing arsenic at levels higher than 10 ppb.

51. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an order requiring Defendant to immediately cease the above described unlawful acts. In addition, Plaintiff seeks restitution for himself and for the Class.

THIRD CLAIM FOR RELIEF

(Violation of California’s Unfair Competition Law (“UCL”)

Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unfair Prong)

52. Plaintiff realleges and incorporates by reference all previous allegations of the Complaint as if they were set forth in full herein.

53. Section 17200 of the California Business & Professions Code (the “UCL”) prohibits any “unlawful, unfair or fraudulent business act or and unfair, deceptive, untrue or misleading advertising ...” Section 17200 specifically prohibits any “unfair ...business act or practice.” Defendant’s practices violate the UCL’s “unfair” prong.

54. A business act or practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims. A business act or practice is also “unfair” under the UCL if a defendant’s conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. A business act or practice is also “unfair” under the UCL where the consumer injury is substantial, the injury is not outweighed by any countervailing benefits to consumers or competition, and the injury is one that consumers themselves could not reasonably have avoided considering the available alternatives.

55.. Defendant’s conduct, as detailed herein, constitutes unfair business practices. Defendant’s practices, as described herein, are “unfair” within the meaning of the UCL because the conduct is unethical and injurious to California residents, and the utility of the conduct to Defendant does not outweigh the gravity of the harm to consumers, including Plaintiff and Class Members.

56. While Defendant’s decision to market the Peñafiel beverages despite their violative nature and in violation of federal and California law may have utility to Keurig in that it allows Defendant to sell more Peñafiel beverages without

1 incurring high compliance costs, this is exactly the type of conduct which the law
2 prohibits.

3 57. Defendant's misconduct not only injures the persons who purchase the
4 Peñafiel beverages, but it also injures also injures competing food product
5 manufacturers, distributors, and sellers that do not engage in the same unfair and
6 unethical conduct, and who do filter their beverages.

7 58. Section 17200 also prohibits any "unfair, deceptive, untrue or
8 misleading advertising." For the reasons set forth above, Defendant engaged in
9 unfair, deceptive, untrue, and misleading advertising in violation of California
10 Business & Professions Code § 17200, the UCL.

11 59. Pursuant to California Business & Professions Code § 17203, Plaintiff
12 seeks an order requiring Defendant to immediately cease such acts of unlawful,
13 unfair, and/or fraudulent business practices. In addition, Plaintiff seeks restitution
14 for himself and for the Class.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Violation of California's False Advertising Law ("FAL"))**

17 **Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

18 60. Plaintiff realleges and incorporates by reference all previous allegations
19 of the Complaint as if they were set forth in full herein.

20 61. Defendant made and distributed, in California and in interstate
21 commerce, the Peñafiel beverages wherein the product was adulterated with high
22 levels of arsenic.

23 62. The FAL states:

24 It is unlawful for any person, firm, corporation or association, or any
25 employee thereof with intent directly or indirectly to dispose of real
26 or personal property or to perform services, professional or
27 otherwise, or anything of any nature whatsoever or to induce the
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1 public to enter into any obligation relating thereto, to make or
2 disseminate or cause to be made or disseminated before the public in
3 this state, or to make or disseminate or cause to be made or
4 disseminated from this state before the public in any state, in any
5 newspaper or other publication, or any advertising device, or by
6 public outcry or proclamation, or in any other manner or means
7 whatever, including over the Internet, any statement,
8 concerning that real or personal property or those services,
9 professional or otherwise, or concerning any circumstance or matter
10 of fact connected with the proposed performance or disposition
11 thereof, which is untrue or misleading, and which is known, or
12 which by the exercise of reasonable care should be known, to be
13 untrue or misleading, or for any person, firm, or corporation to so
14 make or disseminate or cause to be so made or disseminated any
15 such statement as part of a plan or scheme with the intent not to
16 sell that personal property or those services, professional or
17 otherwise, so advertised at the price stated therein, or as so
18 advertised.

19 63. Defendant's business practices as alleged herein constitute unfair,
20 deceptive, untrue and misleading advertising pursuant to California's FAL because
21 Defendant advertised the Peñafiel beverages in a manner that is untrue and
22 misleading, and that is known or reasonably should have been known to Defendant
23 to be untrue or misleading, as Defendant created the impression that the product was
24 safe to consume when, in fact, it was not.

25 64. Pursuant to section 17535 of the California Business and Professions
26 Code, Plaintiff seeks an order of this Court enjoining Defendant from continuing to
27 engage in deceptive business practices, false advertising, and any other act
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1 prohibited by law, including those set forth in the Complaint. In addition, Plaintiff
2 seeks restitution for himself and for the Class.

3
4 **DEMAND FOR JURY TRIAL**

5 Plaintiff demands a trial by jury on all claims for which a jury is available.
6

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, on behalf of himself and the general public,
9 demands judgment against Defendant and requests the entry of:

10 a. An order declaring that the conduct complained of herein violates the
11 CLRA;

12 b. An order declaring that the conduct complained of herein violates the
13 UCL;

14 c. An order declaring that the conduct complained of herein violates the
15 FAL;

16 d. An order enjoining Defendant's unlawful and unfair practices;

17 e. An order requiring Defendant to undertake corrective action;

18 f. An Order of restitution for Plaintiff and for the Class.

19 g. An award of attorneys' fees and the reimbursement of all litigation
20 costs pursuant to, *inter alia*, CLRA, Cal. Civ. Proc. Code § 1021.5, and pursuant to
21 the doctrine set forth in *Graham v. DaimlerChrysler Corp.* 34 Cal.4th 553, 576-77
22 (2004). Such an award is appropriate because: (a) this litigation is aimed at
23 enforcing important rights affecting the public interest; (b) it seeks to confer a
24 significant benefit on the general public or a large class of persons; and (c) the
25 necessity and financial burden of private enforcement is such as to make the award
26 appropriate; and
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28

1 h. Such other and further relief as this Court may deem just, equitable, or
2 proper.

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4 Dated: June 3, 2019

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6 **LAW OFFICES OF DAVID N. LAKE**

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